

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DOUG BRIGGS, individually and as Personal
Representative of THE ESTATE OF BARBARA
DREYFUSS,

Plaintiff,

v.

LIFE CARE CENTERS OF AMERICA, INC., a
foreign corporation; LAKE VUE OPERATIONS,
LLC, a foreign limited liability company; TODD
FLETCHER, individually; and ELLIE BASHAM,
individually,

Defendants.

NO. 2:21-cv-00740-MJP

**STIPULATED PROTECTIVE
ORDER**

DARCY KOVACS, individually and as Personal
Representative of THE ESTATE OF ROBIN
HAMRICK,

Plaintiff,

v.

LIFE CARE CENTERS OF AMERICA, INC., a
foreign corporation; LAKE VUE OPERATIONS,
LLC, a foreign limited liability company; TODD
FLETCHER, individually; and ELLIE BASHAM,
individually,

Defendants.

NO. 2:21-cv-00741-MJP

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1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential, proprietary, or
3 private information for which special protection may be warranted. Accordingly, the parties
4 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
5 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
6 protection on all disclosures or responses to discovery, the protection it affords from public
7 disclosure and use extends only to the limited information or items that are entitled to
8 confidential treatment under the applicable legal principles, and it does not presumptively
9 entitle parties to file confidential information under seal.

10 2. “CONFIDENTIAL” MATERIAL

11 “Confidential” material shall include the following documents and tangible things
12 produced or otherwise exchanged: (1) defendants’ facility policy and procedure manuals; (2)
13 defendants’ personnel files and documents that contain either employees or former employees’
14 personal information; (3) documents that contain proprietary information and/or confidential
15 financial information. Confidentiality as to such documents and materials shall be maintained
16 both during and after case disposition. The listing of confidential categories above does not
17 mean the parties agree all documents in these categories are confidential. The parties retain the
18 right to object to and challenge confidential designations, regardless of whether designated
19 documents and things are in these categories.

20 3. SCOPE

21 The protections conferred by this agreement cover not only confidential material (as
22 defined above), but also (1) any information copied or extracted from confidential material; (2)
23 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
24 conversations, or presentations by parties or their counsel that might reveal confidential
25 material.

26 However, the protections conferred by this agreement do not cover information that is



1 in the public domain or becomes part of the public domain through trial or otherwise.

2 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

3 4.1 Basic Principles. A receiving party may use confidential material that is
 4 disclosed or produced by another party or by a non-party in connection with this case only for
 5 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
 6 disclosed only to the categories of persons and under the conditions described in this agreement.
 7 Confidential material must be stored and maintained by a receiving party at a location and in a
 8 secure manner that ensures that access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 10 ordered by the court or permitted in writing by the designating party, a receiving party may
 11 disclose any confidential material only to:

12 (a) the receiving party's counsel of record in this action, as well as
 13 employees of counsel to whom it is reasonably necessary to disclose the information for this
 14 litigation;

15 (b) the officers, directors, and employees (including in house counsel) of the
 16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
 17 agree that a particular document or material produced is for Attorney's Eyes Only and is so
 18 designated;

19 (c) experts and consultants to whom disclosure is reasonably necessary for
 20 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
 21 (Exhibit A);

22 (d) the court, court personnel, and court reporters and their staff;

23 (e) copy or imaging services retained by counsel to assist in the duplication
 24 of confidential material, provided that counsel for the party retaining the copy or imaging
 25 service instructs the service not to disclose any confidential material to third parties and to
 26 immediately return all originals and copies of any confidential material;



(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary



1 expenses and burdens on other parties) expose the designating party to sanctions.

2 If it comes to a designating party's attention that information or items that it designated
3 for protection do not qualify for protection, the designating party must promptly notify all other
4 parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this
6 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
7 ordered, disclosure or discovery material that qualifies for protection under this agreement must
8 be clearly so designated before or when the material is disclosed or produced.

9 (a) Information in documentary form: (*e.g.*, paper or electronic documents
10 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
11 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
12 contains confidential material. If only a portion or portions of the material on a page qualifies
13 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
14 making appropriate markings in the margins).

15 (b) Testimony given in deposition or in other pretrial proceedings: the
16 parties and any participating non-parties must identify on the record, during the deposition or
17 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate
18 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days
19 after receiving the transcript of the deposition or other pretrial proceeding, designate portions
20 of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
21 confidential information at trial, the issue should be addressed during the pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent place
23 on the exterior of the container or containers in which the information or item is stored the word
24 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
25 the producing party, to the extent practicable, shall identify the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to



1 designate qualified information or items does not, standing alone, waive the designating party's
 2 right to secure protection under this agreement for such material. Upon timely correction of a
 3 designation, the receiving party must make reasonable efforts to ensure that the material is
 4 treated in accordance with the provisions of this agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 7 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 8 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 9 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 10 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 11 original designation is disclosed. The parties shall not, however, challenge a confidentiality
 12 provision after the case has resolved.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 14 regarding confidential designations without court involvement. Any motion regarding
 15 confidential designations or for a protective order must include a certification, in the motion or
 16 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 17 conference with other affected parties in an effort to resolve the dispute without court action.
 18 The certification must list the date, manner, and participants to the conference. A good faith
 19 effort to confer requires a face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 21 intervention, the designating party may file and serve a motion to retain confidentiality under
 22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 24 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
 25 other parties) may expose the challenging party to sanctions. All parties shall continue to
 26 maintain the material in question as confidential until the court rules on the challenge.



1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL,” that party must:

6 (a) promptly notify the designating party in writing and include a copy of
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued
12 by the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
15 confidential material to any person or in any circumstance not authorized under this agreement,
16 the receiving party must immediately (a) notify in writing the designating party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
18 protected material, (c) inform the person or persons to whom unauthorized disclosures were
19 made of all the terms of this agreement, and (d) request that such person or persons execute the
20 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery



1 order or agreement that provides for production without prior privilege review. The parties
2 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 10. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving
5 party must return all confidential material to the producing party, including all copies, extracts
6 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
7 destruction.

8 The parties recognize that electronically produced information (ESI) results in copies
9 made due to back up and archive protocols and no party can guaranty that every copy has been
10 found and deleted. Therefore, the parties commit to use best reasonable efforts to delete
11 confidential information instead of returning it. The parties will use best reasonable efforts to
12 delete confidential information from Concordance or Summation or similar document
13 review/management programs and will use best reasonable efforts to destroy any hard copies
14 made of confidential information, as well as confidential ESI stored in other locations.

15 The confidentiality obligations imposed by this agreement shall remain in effect until a
16 designating party agrees otherwise in writing or a court orders otherwise.

17 *[SIGNATURES ON FOLLOWING PAGE]*
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: 11/17/2021

By s/ Jeffrey D. Boyd

By s/ Deborah M. Nelson

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15
16 DATED: 11/17/2021

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By s/ Brian D. Ernst

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED: November 19, 2021

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10 Marsha J. Pechman
11 United States Senior District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty
 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Western District of Washington on [date]
 in the case of ***Douglas Briggs, individually and as personal Representative of The Estate of
 Barbara Dreyfuss v. Life Care Centers of America, Inc., Lake Vue Operations, LLC, Todd
 Fletcher and Ellie Basham, Case No. 2:21-cv-00740-MJP, consolidated with, Darcy Kovacs,
 individually and as Personal Representative of The Estate of Robin Hamrick v. Life Care
 Centers of America, Inc., Lake View Operations, LLC, Todd Fletcher, and Ellie Basham,
 Case No. 2:21-cv-00741-MJP.*** I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
 will not disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the provisions of this
 Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

